IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

OP.No. 5591 of 2002(N)

PETITIONER:

C.K. SUNDARAN, DEPUTY MANAGER (COSTING)
KERALA AGRO MACHINERY CORPORATION LTD.,
ATHANI, ATHANI P.O., ERNAKULAM.

BY ADV. SRI.P.M.PAREETH

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY SECRETARY, INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.**

2. **KERALA AGRO MACHINERY CORPORATION LTD., ATHANI, REPRESENTED BY ITS MANAGING DIRECTOR, ATHANI P.O., ERNAKULAM DISTRICT.**

3. **MANAGING DIRECTOR, KERALA AGRO MACHINERY CORPORATION LTD., ATHANI, ATHANI P.O., ERNAKULAM, DISTRICT.**

4. **MANASGER (PERSONNEL), KERALA AGRO MACHINERY CORPORATION LTD., ATHANI, ATHANI P.O., ERNAKULAM DISTRICT.**

5. **DEPUTY MANAGER (ACCOUNTS), KERALA AGRO MACHINERY CORPORATION LTD., ATHANI, ATHANI P.O., ERNAKULAM DISTRICT.**

BY ADV. SRI.A.K.JAYASANKAR NAMBIAR
GOVERNMENT PLEADER SMT.T.B.RAMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.9791/2002 IN OP. NO.5591/2002

DISMISSED

10.07.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.KB2/579/DT.28.9.99 ISSUED BY THE DEPUTY GENERAL MANAGER (P&A), KAMCO, ATHANI.

EXT.P2:- COPY OF THE SUBMISSION DT. 4.10.99 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P3:- COPY OF THE ORDER NO.KB2/63A DT. 17.1.2000 ISSUED BY THE 3RD RESPONDENT.

EXT.P4:- COPY OF THE STATEMENT OF FIXATION OF PAY IN RESPECT OF THE PETITIONER ISSUED BY THE DY.GENERAL MANAGER (P&A), CAMCO.

EXT.P5:- COPY OF THE COMMUNICATION NO.KB2/63A dt. 19.7.01 ISSUED BY THE FOURTH RESPONDENT TO THE PETITIONER.

EXT.P6:- COPY OF THE ORDER DT. 13.2.02 ISSUED BY THE 5TH RESPONDENT.

EXT.P7:- COPY OF THE ORDER NO.B/84 DT. 26.12.84 ISSUED BY THE 2ND RESPONDENT WITH SPECIAL RULES FRAMED FOR RECRUITMENT AND PROMOTIONS OF MANAGERIAL AND SUPERVISORY EMPLOYEES.

EXT.P8:- COPY OF THE AUDIT ENQUIRY ISSUED BY ASST. AUDIT OFFICER, CA PARTY III, KAMCO, ATHANI.

EXT.P9:- COPY OF THE ORDER NO.KB2/63A DT. 24.7.98 ISSUED BY 3RD RESPONDENT.

EXT.P10:- COPY OF THE COMPARATIVE STATEMENT AS ON 24.9.99 .

EXT.P1:- COPY OF THE ORDER NO.KB2/63 DT. 26.5.04 ISSUED BY THE 4TH RESPONDENT.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.5591 of 2002-N

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Dated this the 10th day of July, 2007.

JUDGMENT

By Ext.P3, the petitioner, then a Deputy Manager, was given an order stepping up his pay on the premise that it is to cure an anomaly on account of Sri.Saseendran, a junior of the petitioner in service drawing a higher pay. Saseendran was admittedly an Assistant Manager and the petitioner a Deputy Manager. Applying Ext.P7 Special Rules, Assistant Managers and Deputy Managers are different posts/grades. So much so, even if the petitioner was drawing a lower pay in a higher post of Deputy Manager than that drawn by Saseendran in the lower post of Assistant Manager, there was no question of an anomaly where a junior was drawing a higher pay in the same post or grade. I may at once notice that Ext.P7 does not provide a classification of the service

into class and category. All that it provides is posts/grades. Even if the junior Saseendran was drawing a higher pay in a scale which may be equivalent to that of the Deputy Manager, that gives no foundation to treat it as an anomaly for rectification. Petitioner points out Ext.P9 produced along with I.A.9622/2004. That is a document by which the aforesaid Saseendran, as an Assistant Manager, obtained a rectification order which is stated to be on the basis of the pay drawn by his junior Smt.Snehaprabha Devi. However, there is no pleading even in paragraph 1 of the affidavit accompanying that petition that Snehaprabha Devi was working in a different post or grade.

2. For the aforesaid reasons, the impugned action ordering recovery of the over-drawals cannot be found fault with. Applying the ratios of the decisions of the Division Bench of this Court in **State of Kerala v. Saiful Islam** [2006 (1) KLT 619] and **Santhakumari v. State of Kerala** [2005 (4) KLT 649], the recovery cannot be stopped.

In the result, the writ petition fails. The same is accordingly dismissed.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 5591 of 2002-N

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JUDGMENT

Dated: 10th July, 2007.